

**CHEMICAL WASTE MANAGEMENT, INC.;
EARTHLINE COMPANY; FILCREST REALTY,
INC.; ANTHONY GAESS; INMAR
ASSOCIATES, INC.; KIN-BUC, INC.;
SCA SERVICES, INC.; SCA SERVICES
OF PASSAIC, INC.; TRANSTECH INDUSTRIES,
INC.; WASTE MANAGEMENT, INC.;
WASTE MANAGEMENT HOLDINGS, INC.;
and WASTEQUID, INC.**

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106(b) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(b), 9607(a), against Chemic'al Waste Management, Inc., Earthline Company, Filcrest Realty, Inc., Anthony Gaess, Inmar Associates, Inc., Kin-Buc, Inc., SCA Services, Inc., SCA Services of Passaic, Inc., Transtech Industries, Inc., Waste Management, Inc., Waste Management Holdings, Inc., and Wastequid, Inc. ("Defendants"), seeking reimbursement of response costs allegedly incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Kin-Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey ("Site"), and civil penalties for alleged violations of a Unilateral Administrative Order ("UAO") Index No. II-CERCLA-00114, issued by EPA on September 21, 1990, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

B. This Consent Decree resolves the United States' claims through: payment by Settling Defendants of \$2,625,000 in Past Response Costs, plus interest; payment by Settling Defendants of a \$100,000 penalty, plus interest; performance of a Supplemental Environmental Project ("SEP") requiring the transfer of title to over 95 acres of land and the granting of one or more conservation easements preserving such land as open space in perpetuity; payments by Settling Defendants totaling \$108,000 to \$123,000 for open space land management and wetland restoration and maintenance; the performance of restoration and maintenance work, as appropriate, on certain wetland portions of the 95-plus acres referenced above and, if possible, on

wetland portions of up to 200 or more additional acres in the vicinity of the Raritan River and the estuary at its confluence with the Raritan Bay.

C. The New Jersey Department of Environmental Protection and Acting Administrator, New Jersey Spill Compensation Fund filed a separate complaint against the same Defendants, seeking reimbursement of response costs allegedly incurred and to be incurred with respect to the Site, and damages for injury to natural resources ("NRD"), pursuant to Sections 107(a) and 113(g) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(g), and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. ("Spill Act"). The Court consolidated the federal and state claims into the above-captioned action. This Consent Decree does not address or resolve any of the State's claims in this action. Settling Defendants have negotiated a proposed Consent Decree with the State which, if entered by this Court, would resolve the above-referenced claims by the State against Settling Defendants ("State Decree"). Among other things, the proposed State Decree requires the WMI Group to perform an NRD Project (as defined in Paragraph 3(p) below) on certain real property including the "NRD Property," as defined in Paragraph 3(p) of this Consent Decree. The State Decree was lodged with the Court at or about the date of lodging of this Consent Decree.

D. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint in this action.

E. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon and inures to the benefit of the United States and Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, including without limitation any appendix attached hereto, the following definitions shall apply:

a. "1990 UAO" shall mean the Unilateral Administrative Order Index No. II-CERCLA-00114, issued by EPA on September 21, 1990.

b. "1990 UAO Work Plan" shall mean the document entitled "OU1 Wetlands Mitigation Work Plan, Kin-Buc Landfill, Edison, New Jersey, December 1996," prepared by

Blasland, Bouck & Lee ("BB&L"), and all modifications thereof, approved by EPA pursuant to Section VIII of the 1990 UAO.

c. "1992 UAO" shall mean the Unilateral Administrative Order Index No. II-CERCLA-93-0101, issued by EPA on November 19, 1992.

d. "Block" and "Lot" shall mean the real property identified by block and lot number on the Tax Map for the Township of Edison, Middlesex County, New Jersey (revised Jan. 1, 2004), pages 205-207.

e. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

f. "Consent Decree" or "Decree" shall mean the above-captioned Consent Decree (i.e., this document, signed by all Parties to the above-captioned action except the State), all appendices hereto, identified in Section XXII, including without limitation the Wetland Restoration and Land Management Project Statement of Work, attached hereto as Appendix D, and any modification thereof ("WLP SOW"), the OSLMP, the WRP, the IFP and the FFP (defined in Paragraphs 3(r), (kk), (m) and (l), respectively), and all other appendices and plans attached hereto or expressly incorporated by reference herein, including any modification thereof, and any plans and schedules established by or approved under any such documents, including any modification thereof. In the event of a conflict between the above-captioned Consent Decree and any such appendix, plan or schedule, the above-captioned Consent Decree shall control.

g. "Conservation Organization" shall mean a corporation or trust whose purposes include the acquisition and preservation of land or water areas in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which (in the case of a private organization) has received tax

exemption as a not-for-profit organization under Section 501(c)(3) of the 1954 U.S. Internal Revenue Code ("Section 501(c)(3)"). "Conservation Organization" includes, without limitation, entities defined as "charitable conservancies" under N.J.S.A. § 13:8B-2(a). For purposes of this Consent Decree, the definition of Conservation Organization also includes the Clean Land Fund, a tax exempt not-for-profit organization under Section 501(c)(3) incorporated in Rhode Island, with principal offices currently located at 815 Beacon Hill Road, P.O. Box 725, Block Island, RI 02807 ("CLF"); provided that CLF shall not fall within this definition if, for any reason, it fails to maintain its status as a Section 501(c)(3) tax exempt not-for-profit organization. The final determination whether any organization qualifies as a "Conservation Organization" shall be within the sole, unreviewable discretion of EPA.

h. "Day" shall mean a calendar day, unless expressly stated otherwise. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

i. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

j. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

k. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "FFP" shall mean the Final Financing Plan, any schedules or plans prepared pursuant thereto, and any modifications thereof, approved by EPA pursuant to the WLP SOW attached hereto as Appendix D.

m. "IFP" shall mean the Initial Financing Plan, any schedules or plans prepared pursuant thereto, and any modifications thereof, approved by EPA pursuant to the WLP SOW attached hereto as Appendix D.

n. Unless otherwise expressly provided, "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

o. "Net Sales Proceeds" shall mean the total value of all consideration received for the conveyance of title to Property A (as defined in Paragraph 3(y) below) including all portions thereof, or of any interest in such property, less: (a) closing costs limited to those reasonably incurred, as determined by the United States, and actually paid by the seller associated with the conveyance, such as broker or legal fees; (b) any transaction costs incurred, including legal fees associated with drafting the purchase and sale agreement, which are determined by the United States to be reasonable; and (c) property taxes owing from the date the seller acquired title to the property until the date of the conveyance.

p. "NRD Project" shall mean those activities that the WMI Group is required to perform pursuant to the proposed State Decree (defined in Paragraph I(C) above) on certain real property, including Block 400, Lots 2-A, 3-B, 3-C, 8, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 52, 53, 56, 60 and 61. "NRD Property" shall mean all real property identified by lot number in this Paragraph.

q. "Open Space" shall mean land protected through the recording and granting to a Conservation Organization, as defined in Paragraph 3(g) above, of one or more conservation easement(s) approved by EPA, that run(s) with the land and prevents development

on such land in perpetuity, in substantially the same form as the conservation easements attached hereto as Appendix E, as provided by Section VII (Supplemental Environmental Project) of this Consent Decree.

r. "OSLMP" shall mean the Open Space Land Management Plan, any schedules or plans prepared pursuant thereto, and any modifications thereof, approved by EPA pursuant to the WLP SOW attached hereto as Appendix D.

s. "Owner Settling Defendants" shall mean Filcrest Realty, Inc., Inmar Associates, Inc., Kin-Buc, Inc., and Transtech Industries, Inc.

t. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter. Unless otherwise specified, Paragraphs referenced in this Consent Decree are located within the document in which they are referenced.

u. "Parties" shall mean the United States and Settling Defendants.

v. "Past Response Actions" shall mean all response actions taken at or in connection with the Site by the United States or Settling Defendants through March 4, 2003.

w. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site through March 4, 2003, and that DOJ has incurred at or in connection with the Site through July 26, 2003, plus accrued Superfund Interest on all such costs through December 31, 2003.

x. "Plaintiff" shall mean the United States.

y. "Property A," "Property B," "Property C" and "Property D" shall mean the four categories of real property described by block and lot in Appendix A hereto and depicted generally on the map attached hereto as Appendix B.

z. "Section" shall mean a portion of this Consent Decree identified by a roman numeral. Unless otherwise specified, Sections referenced in this Consent Decree are located in this Consent Decree.

aa. "Settling Defendants" shall mean Chemical Waste Management, Inc., Earthline Company, Filcrest Realty, Inc., Anthony Gaess, Inmar Associates, Inc., Kin-Buc, Inc., SCA Services, Inc., SCA Services of Passaic, Inc., Transtech Industries, Inc., Waste Management, Inc., Waste Management Holdings, Inc., and Wastequid, Inc.

bb. "Site" shall mean the Kin-Buc Landfill Superfund Site, encompassing approximately 220 acres, located at 383 Meadow Road, Edison Township, Middlesex County, New Jersey, as depicted generally on the map attached hereto as Appendix B.

cc. "State" shall mean the State of New Jersey, including without limitation Plaintiffs New Jersey Department of Environmental Protection and Acting Administrator, New Jersey Spill Compensation Fund.

dd. "Supplemental Environmental Project," or "SEP," shall mean the requirements of this Consent Decree related to conveyance of title to Property A, or any interest therein, and the restriction of development thereon, including the requirements of Section VII (Supplemental Environmental Project), and the related provisions of Section IX (Certifications and Reports), and any modifications thereof.

ee. "UAO Respondents" shall mean the Respondents to the UAOs, including Anthony Gaess, Marvin Mahan, Robert Meagher, Earthline Company, Chemical Waste Management, Inc., Filcrest Realty, Inc., Inmar Associates, Inc., Kin-Buc, Inc., SCA Services, Inc., SCA Services of Passaic, Inc., Transtech Industries, Inc., f/k/a Scientific Inc., and Wastequid, Inc.

ff. "UAOs" shall mean the 1990 UAO and the 1992 UAO.

gg. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

hh. "Wetland Restoration and Land Management Project" or "WLP" shall mean the requirements of this Consent Decree related to the identification, restoration and maintenance of wetlands on Properties C and D (defined in Paragraph 3(y) above), and to the management of Properties A and D in accordance with the purposes and requirements of the Consent Decree, including the requirements of Section VIII (Additional Relief), the WLP SOW, the OSLMP, the WRP, the IFP and the FFP (defined in Paragraphs 3(f), (r), (kk), (m) and (l), respectively), the related provisions of Section IX (Certifications and Reports), and any modifications thereof.

ii. "WMI Group" shall mean Defendants Chemical Waste Management, Inc., SCA Services, Inc., SCA Services of Passaic, Inc., Wastequid, Inc., Waste Management Holdings, Inc., Waste Management, Inc., Earthline Company, and Anthony Gaess.

jj. "Work" shall mean all activities related to the SEP and the WLP that Owner Settling Defendants are required to perform under this Consent Decree, except those required by Section XIX (Retention of Records).

kk. "WRP" shall mean the Wetland Restoration Plan, any schedules or plans prepared pursuant thereto, and any modifications thereof, approved by EPA pursuant to the WLP SOW attached hereto as Appendix D.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund.

Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$2,625,000 in reimbursement of Past Response Costs, plus Superfund Interest, either through direct payment or via a court registry account, as follows:

a. Direct Payment. No later than thirty (30) days after entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$2,625,000 in reimbursement of Past Response Costs, plus an additional sum for Superfund Interest on that amount calculated from November 8, 2004 through the date of payment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number 2002v00795, the EPA Region and Site Spill Number NJD049860836, and DOJ Case Number 90-11-3-1563/1. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of New Jersey following lodging of the Consent Decree. Any EFTs received by the U.S. Department of Justice after 4:00 p.m. Eastern Time will be credited on the next business day.

b. Payment Via Court Registry Account

i. Alternatively, at the option of Settling Defendants, after lodging but before entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$2,625,000 in reimbursement of Past Response Costs, plus an additional sum for Superfund Interest on that amount calculated from November 8, 2004 through the date of payment, into an interest-bearing court registry account established by the Court pursuant to a joint stipulation by the United States and Settling Defendants ("Court Registry Account"). In the

event this Consent Decree is not entered, Settling Defendants may apply to the Court for the return of the proceeds in the Court Registry Account, including interest accrued thereon ("Court Registry Interest"), in accordance with the Court's order establishing such Court Registry Account.

ii. Upon entry of this Consent Decree, any and all amounts paid by Settling Defendants into the Court Registry Account, and any Court Registry Interest or other amounts in the Court Registry Account, shall be released and paid to the United States by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number 2002v00795, the EPA Region and Site Spill Number NJD049860836, and DOJ Case Number 90-11-3-1563/1. The disbursement of funds from the Court Registry Account shall be made in accordance with instructions provided to the Clerk of Court by the Financial Litigation Unit of the U.S. Attorney's Office in the District of New Jersey. Any EFTs received by the U.S. Department of Justice after 4:00 p.m. Eastern Time will be credited on the next business day.

iii. At the time of the disbursement of any funds from the Court Registry Account, the Clerk of Court shall send written notice of payment and a copy of any transmittal documentation to EPA, DOJ and the Settling Defendants at the addresses set forth in Section XX (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866, as provided in the stipulation and proposed order to be submitted to the Court.

iv. Pursuant to 28 U.S.C. § 1914, notwithstanding Local Rule 67.1, because the Account is being handled on behalf of the United States, the Clerk of the Court shall

not deduct any fee for the handling of the Court Registry Account, as provided in the stipulation and proposed order to be submitted to the Court.

VI. CIVIL PENALTY

5. Payment of Civil Penalty. No later than the date of execution of this Consent Decree by all Settling Defendants, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$100,000, as a civil penalty for alleged noncompliance with the 1990 UAO, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), plus interest, as follows:

a. Pursuant to the Court Registry Order, Settling Defendants shall make payments totaling \$100,000, plus an additional sum for Superfund Interest on that amount, calculated from November 8, 2004 through the date of payment, into an interest-bearing Court Registry Account.

b. Upon entry of this Consent Decree, any and all amounts paid by Settling Defendants into the Court Registry Account, and any Court Registry Interest accrued or other amounts in the Court Registry Account, shall be released and paid to the United States by EFT to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number 2002v00795, the EPA Region and Site Spill Number NJD049860836, and DOJ Case Number 90-11-3-1563/1. The disbursement of funds from the Court Registry Account shall be made in accordance with instructions provided to the Clerk of the Court by the Financial Litigation Unit of the U.S. Attorney's Office in the District of New Jersey following lodging of the Consent Decree. Any EFTs received by the U.S. Department of Justice after 4:00 p.m. Eastern Time will be credited on the next business day.

c. At the time of disbursement of funds from the Court Registry Account, the Clerk of the Court shall send written notice of payment and a copy of any transmittal

documentation to EPA, DOJ and the Settling Defendants at the addresses set forth in Section XX (Notices and Submissions), and to Chief, Financial Management Branch, U.S.EPA Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866.

d. Pursuant to 28 U.S.C. § 1914, notwithstanding Local Rule 67.1, because the Account is being handled on behalf of the United States, the Clerk of the Court shall not deduct any fee for the handling of the Court Registry Account.

6. The civil penalty set forth herein is a penalty within the meaning of Section 162(f) of the Internal Revenue Service Code, 26 U.S.C. § 162(f), and therefore Settling Defendants shall not deduct the civil penalty paid under this Section VI in calculating their federal, state or local income taxes.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

7. In addition to Settling Defendants' civil penalty payment under Section VI, Owner Settling Defendants shall provide funding and perform Work, and the WMI Group shall provide additional funding, for a Supplemental Environmental Project, known as the Kin-Buc Open Space Preservation Project ("SEP"), in accordance with all provisions of and schedules in this Consent Decree.

8. Purpose. The purpose of the SEP is to protect as Open Space certain real property in and around the Site, defined as Property A in Paragraph 3(y).

9. General Description. The SEP includes: (1) the payment to CLF by Settling Defendants of a total of \$25,000, as provided in Paragraph 10 below, to be used exclusively by CLF, or by another Conservation Organization approved by EPA, for the payment of Eligible SEP Costs, as provided in Paragraph 11 below; (2) the preservation of Property A as Open Space through the recording and granting to a Conservation Organization of one or more EPA-approved

conservation easement(s) running with the land, preventing development and other uses thereof in perpetuity, with certain exceptions set forth in such conservation easement(s); and (3) the conveyance of title to Property A, subject to the conservation easement(s), to at least one other Conservation Organization or government agency approved by EPA, or the retention by CLF of such title to Property A, subject to the conditions set forth in the WLP SOW.

10. The WMI Group and Owner Settling Defendants shall each make payments to be used exclusively for the Satisfactory Completion of the SEP, as follows:

a. no later than the date of execution of this Consent Decree by all Settling Defendants, the WMI Group shall pay to CLF, or to another Conservation Organization approved in writing by EPA, \$12,250 to be used exclusively for the payment of Eligible SEP Costs, in accordance with Paragraph 11 below; and

b. prior to the execution of this Consent Decree by all Settling Defendants, Owner Settling Defendants shall have paid to CLF, or to another Conservation Organization approved in writing by EPA, \$12,750, to be used exclusively for the payment of Eligible SEP Costs, in accordance with Paragraph 11 below.

11. Within thirty (30) days after entry of this Consent Decree, Owner Settling Defendants shall ensure that not less than \$25,000 is spent on Eligible SEP Costs. "Eligible SEP Costs" shall mean the costs of reimbursing CLF for any reasonable costs it incurred, prior to execution of this Consent Decree by all Settling Defendants, in: identifying a qualified Conservation Organization, approved by EPA, willing and able to accept one or more conservation easement(s), in substantially the same form as that attached hereto as Appendix E; recording, or facilitating the recording, of such conservation easement(s) in the appropriate local land office; granting such conservation easement(s) to the appropriate EPA-approved

Conservation Organization(s); and conveying title to Property A, subject to the conservation easement(s); and any other costs of achieving the Satisfactory Completion of the SEP, pursuant to this Consent Decree. "Eligible SEP Costs" do not include: Settling Defendants' legal fees; oversight of Settling Defendants' contractors; Settling Defendants' inventory on hand, overhead or employee time and salary; costs that any person other than Owner Settling Defendants is obligated or committed to pay; costs paid by, or using funds from, any party other than Owner Settling Defendants; or costs spent on activities not required by this Consent Decree. No cost shall be an Eligible SEP Cost unless it is expended in accordance with the requirements of this Consent Decree. The determination of what costs qualify as "Eligible SEP Costs" shall be within the sole, unreviewable discretion of EPA.

12. Owner Settling Defendants shall achieve the Satisfactory Completion of the SEP in accordance with the requirements of this Consent Decree. "Satisfactory Completion of the SEP" means:

a. prior to the execution of this Consent Decree by all Settling Defendants, the payment by Settling Defendants to CLF of a total of \$25,000, as provided in Paragraph 10 above, to be used exclusively by CLF or by another Conservation Organization approved by EPA, for the payment of Eligible SEP Costs, as provided in Paragraph 11 above;

b. prior to execution of this Consent Decree by all Settling Defendants, the preservation of Property A as Open Space through the granting to CLF, or another Conservation Organization or government agency approved by EPA, of one or more conservation easement(s) running with the land, preventing development and other uses thereof, with certain exceptions, in perpetuity, in substantially the form as that set forth in Appendix E hereto, subject to the proviso in Paragraph 12(c) below;

c. prior to execution of this Consent Decree by all Settling Defendants, as soon as possible following the granting of the conservation easement(s) required by Paragraph 12(a) above, the conveyance to CLF, or another Conservation Organization or government agency approved by EPA, of title to Property A, subject to the conservation easement(s); provided that, if the title to Property A and the conservation easement(s) are transferred to the same EPA-approved Conservation Organization (e.g., CLF), then Owner Settling Defendants shall convey the conservation easement(s) to be held by that Conservation Organization in trust and shall include an express provision in the deed transferring title pursuant to Paragraph 12.b, which states that there shall be no merger of such property interests and that the conservation easement(s) shall be conveyed to another EPA-approved Conservation Organization or government agency as soon as possible.

d. prior to execution of this Consent Decree by all Settling Defendants, or as soon as possible thereafter, the conservation easement(s) shall be granted to a Conservation Organization or government agency different from CLF (or the other Conservation Organization or government agency holding title to Property A, pursuant to Paragraph 12(a));

e. as soon as possible following the granting of the conservation easement(s) required by Paragraph 12(a) above, the recording of such conservation easement(s) in the Office of the County Clerk, Middlesex County, New Jersey, or other appropriate state or local records office; and

f. compliance with all other requirements of this Consent Decree relating to the SEP.

13. Owner Settling Defendants shall enter into no contract or agreement, nor modify any existing contract or agreement, and shall enter into no transaction, to implement all or a

portion of the SEP without the prior written approval of EPA. Any contract or agreement entered into by Owner Settling Defendants, or modification thereof, to implement the SEP shall expressly provide that: (a) the parties thereto shall not assert as a defense to a claim under such contract or agreement the absence of personal or subject matter jurisdiction by this Court; (b) such contract or agreement is enforceable in all respects by the United States as third-party beneficiary; (c) such contract or agreement is enforceable by the WMI Group only to the extent necessary to enforce its rights and entitlements expressly stated therein against the parties thereto; and (d) in no event shall such a contract or agreement create a cause of action against the United States, nor can the United States be named as a defendant in any action that seeks to enforce such contract or agreement. Nothing in this Paragraph shall affect the rights of Owner Settling Defendants or any other party to such contract or agreement that may exist under New Jersey law to bring a claim against the WMI Group as third-party beneficiaries.

VIII. ADDITIONAL RELIEF

14. In addition to Settling Defendants' civil penalty payment under Section VI and the performance of the SEP pursuant to Section VII, Owner Settling Defendants shall provide funding and perform Work, and the WMI Group shall provide additional funding (and possibly certain Work pursuant to Paragraphs 34 and 35), for additional relief, known as the Kin-Buc Wetland Restoration and Land Management Project ("WLP"), in accordance with all provisions of and schedules in this Consent Decree. The WLP SOW and, if approved by EPA in accordance with the provisions of this Consent Decree, the OSLMP, WRP, IFP and FFP (defined in Paragraphs 3(r), (hh), (m) and (l), respectively), are incorporated by reference in this Consent Decree and are fully enforceable hereunder.

15. Purpose. The objective of the WLP is to identify, restore, maintain and make self-sustaining all historic and current wetlands on Property C and, if possible, Property D (defined in Paragraph 3(y)), which are not otherwise required to be restored or maintained, and to ensure that Property A and, if possible, Property D is preserved in perpetuity as Open Space and managed in a manner that is consistent with the purposes and requirements of this Consent Decree. "Self-sustaining" shall mean that Owner Settling Defendants have demonstrated to EPA's satisfaction that, after invasive plant species such as phragmites have been removed and native species such as spartina have been reintroduced, there has been no significant recolonization of such invasive species and no significant loss of such native species, within the areal extent of such wetlands for at least three (3) growing seasons after the most recent maintenance work has been completed. The Parties recognize that such recolonization may not be self-sustaining without a revision in area topography and hydrology that creates an aquatic environment with cyclic inundation and slow drainage.

16. General Description. The WLP includes: (1) the payment to CLF by Settling Defendants of a total of \$83,000 to \$98,000, as provided in Paragraphs 17 and 18 below (which, together with the payment to CLF required by Paragraph 10 above, equals \$108,000 to \$123,000), to be used exclusively by CLF, or by another Conservation Organization approved by EPA, for the payment of Eligible WLP Costs, as provided in Paragraph 18 below; (2) the identification, restoration and maintenance to the point of self-sustenance of all historic and current wetlands on Property C and, if possible, Property D, as described more fully in the WLP SOW; (3) in the event that CLF, or another Conservation Organization approved by EPA as a replacement for CLF, acquires title to all or a portion of Property D, the preservation of such property as Open Space through the recording and granting to a Conservation Organization of

one or more conservation easement(s), running with the land, preventing development and other uses thereof in perpetuity, in substantially the same form as the conservation easements attached hereto as Appendix E; (4) the conveyance of title to Property D, subject to the conservation easement(s) referenced in (3) above to at least one other Conservation Organization or government agency approved by EPA, except to the extent CLF elects to retain title to Property D as provided in the WLP SOW; and (5) the management of Property A and, if possible, Property D in accordance with the purposes and requirements of this Consent Decree. The wetland restoration work required under this Section VIII excludes the NRD Property, because the WMI Group has agreed to perform the NRD Project on the NRD Property pursuant to the proposed State Decree.

17. The WMI Group and Owner Settling Defendants shall each make payments to be used exclusively for the Satisfactory Completion of the WLP, as follows:

a. no later than the date of execution of this Consent Decree by all Settling Defendants, the WMI Group shall pay to CLF, or to another Conservation Organization approved in writing by EPA, \$27,750 (which, together with the payment by the WMI Group required by Paragraph 10(a) above, equals \$40,000) to be used exclusively for the payment of Eligible WLP Costs, in accordance with Paragraph 18(a) below; and

b. prior to the execution of this Consent Decree by all Settling Defendants, Owner Settling Defendants shall have paid to CLF, or to another Conservation Organization approved in writing by EPA, \$55,250 (which, together with the payment by Owner Settling Defendants required by Paragraph 10(b) above, equals \$68,000), to be used exclusively for the payment of Eligible WLP Costs, in accordance with Paragraph 18(a) below.

c. If CLF submits invoices to Owner Settling Defendants which document that up to \$5,000 worth of eligible WLP costs were incurred in excess of the total amount required to have been contributed by Settling Defendants, pursuant to Paragraphs 10, 17(a)-(b) and 18(b)-(c), then within 30 days after receipt of such invoices, Owner Settling Defendants shall pay an additional up to \$5,000 to CLF.

18. Eligible WLP Costs

a. Within six (6) months after entry of this Consent Decree, Owner Settling Defendants shall ensure that not less than the sum of the amounts paid to CLF pursuant to Paragraphs 17 and 18(b)-(c) (i.e., \$83,000 to \$98,000) is spent on Eligible WLP Costs. "Eligible WLP Costs" shall mean: costs of identifying third parties willing to contribute additional funds toward the CLF of the WLP; costs of preparing and implementing an OSLMP, WRP, IFP and FFP, and any modifications thereof, as provided in the WLP SOW; the costs of acquiring title to Property D for the purposes set forth herein; the costs of preserving Property D as Open Space as provided herein; and any other costs of achieving the Satisfactory Completion of the WLP, pursuant to this Consent Decree. "Eligible WLP Costs" do not include: Settling Defendants' legal fees; oversight of Settling Defendants' contractors; Settling Defendants' inventory on hand, overhead or employee time and salary; costs that any person other than Settling Defendants is obligated or committed to pay; costs paid by, or using funds from, any party other than Settling Defendants; or costs spent on activities not required by this Consent Decree. No cost shall be an Eligible WLP Cost unless it is expended in accordance with the requirements of this Consent Decree. The determination of what costs qualify as "Eligible WLP Costs" shall be within the sole, unreviewable discretion of EPA. Any and all funds raised by or on behalf of Owner Settling Defendants, including, but not limited to, funds raised by CLF (or any other

Conservation Organization approved by EPA as a substitute therefor), in connection with Property A, B, C or D, or the WLP, including without limitation any Net Sales Proceeds from the sale of Property A, shall be spent exclusively on performance of the WLP in accordance with this Consent Decree; provided, however, that the first \$20,000 of any such funds, including any Net Sales Proceeds as defined in Paragraph 3(o) above, shall be spent exclusively on the maintenance of wetlands on Block 400, Lots 49, 59 and 70, pursuant to this Consent Decree, unless otherwise approved in writing by EPA.

b. The WMI Group shall make an additional payment of \$5000 to CLF, in the event that:

i. the first \$15,000 of such \$20,000 is raised after the fall of 2005 but in time to finance the performance of such wetland maintenance in the fall of 2006, and CLF actually performs such wetland maintenance in the fall of 2006; or

ii. the U.S. Army Corps of Engineers ("ACOE") commits, before September 1, 2006, to perform such wetland maintenance in 2006, 2007, 2008 and 2009, and actually performs such wetland maintenance in the fall of 2006.

c. The WMI Group shall make an additional payment of \$10,000 to CLF, in the event that:

i. the first \$25,000 of funds raised by or on behalf of Owner Settling Defendants is raised on or before September 1, 2005, and CLF deposits such funds in an interest-bearing restricted account for use exclusively in performing such wetland maintenance, and actually performs such wetland maintenance in the fall of 2005; or

ii. the ACOE commits, before September 1, 2005, to perform such wetland maintenance in 2005, 2006, 2007, 2008 and 2009, and actually performs such wetland maintenance in the fall of 2005.

d. Paragraphs 18(b)-(c) do not require the WMI Group to make any payment to CLF in excess of \$10,000.

e. Any amount paid by the WMI Group to CLF pursuant to Paragraph 18(b)-(c) shall be spent on Eligible WLP Costs.

19. Owner Settling Defendants shall achieve the Satisfactory Completion of the WLP in accordance with the requirements of this Consent Decree. "Satisfactory Completion of the WLP" means:

a. the payment to CLF of a total of \$83,000 to \$98,000, pursuant to Paragraphs 17 and 18(b)-(c) above, and the expenditure of at least that amount on Eligible WLP Costs, in accordance with Paragraph 18(a) above; and

b. full and timely compliance with all other requirements of Paragraphs 14 and 17 through 23 of this Section VIII and the WLP SOW, including without limitation the WLP SOW's requirements regarding the preparation and implementation of an OSLMP, a WRP, an IFP and an FFP, including any modifications thereof, and regarding the conveyance of title to Property A, subject to the conservation easement(s), to CLF (or a substitute Conservation Organization approved by EPA), pursuant to Paragraph 12 above, and as soon as possible from CLF (or a substitute Conservation Organization approved by EPA) to another Conservation Organization or government agency approved by EPA.

20. Contractors.

a. Owner Settling Defendants shall enter into no contract or agreement, nor modify any existing contract or agreement, and shall enter into no transaction, to implement all or a portion of the WLP without the prior written approval of EPA. Any contract or agreement entered into by Owner Settling Defendants, or modification thereof, to implement all or a portion of the WLP, shall expressly provide that: (a) the parties thereto shall not assert as a defense to a claim under such contract or agreement the absence of personal or subject matter jurisdiction by this Court; (b) such contract or agreement is enforceable in all respects by the United States as third-party beneficiary; (c) such contract or agreement is enforceable by the WMI Group only to the extent necessary to enforce its rights and entitlements expressly stated therein against the parties thereto; and (d) in no event shall such a contract or agreement create a cause of action against the United States, nor can the United States be named as a defendant in any action that seeks to enforce such contract or agreement. Nothing in this Paragraph shall affect the rights of Owner Settling Defendants or any other party to such contract or agreement that may exist under New Jersey law to bring a claim against the WMI Group as a third-party beneficiary.

b. Owner Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform all or a portion of the WLP, and to each person representing any Owner Settling Defendant with respect to the WLP, and shall condition all contracts entered into hereunder upon performance of the WLP in conformity with the terms of this Consent Decree. Owner Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the WLP required by this Consent Decree. Owner Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the WLP contemplated herein, in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each

contractor and subcontractor shall be deemed to be in a contractual relationship with the Owner Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.

§ 9607(b)(3).

c. If, after Owner Settling Defendants take the steps required by Paragraph 25 of the WLP SOW to enforce the contract between Owner Settling Defendants and CLF attached hereto as Appendix F ("CLF Contract") in the event of a breach by CLF, and the steps required by Paragraphs 26 through 28 of the WLP SOW to find a substitute for CLF in the event such attempts to enforce the CLF Contract have been unsuccessful, Owner Settling Defendants are nevertheless unable to identify a qualified organization approved by EPA willing to act as a substitute for CLF, as determined by EPA, then Owner Settling Defendants shall not be required:

i. to substitute themselves, in whole or in part, for CLF to complete the tasks required exclusively of CLF pursuant to the CLF Contract; or

ii. to act as a guarantor of the performance of the tasks required exclusively of CLF pursuant to the CLF Contract.

21. No Interference

a. All Parties acknowledge that (1) UAO Respondents (as defined in Paragraph 3(ee) above), continue to have obligations to perform remedial activities at the Site pursuant to the requirements of the UAOs, including, among other things, the operation and maintenance of the landfill cap, the treatment plant, gas flares, above-ground piping and slurry wall (the "UAO Installations"), and (2) the WMI Group has obligations to perform the NRD Project pursuant to the State Consent Decree.

b. No Owner Settling Defendant, or agent thereof, including but not limited to CLF, shall obstruct, impede or interfere with the performance of the remedy at the Site or the

UAO Installations, as required by the UAOs or any modification thereof, with implementation of the NRD Project or any modification thereof at the Site, or with implementation of any other governmental order or directive issued with respect to the Site or this Consent Decree.

c. No member of the WMI Group, or agent thereof, shall obstruct, impede or interfere with the performance of the Work required pursuant to this Consent Decree, or with implementation of any other governmental order or directive issued with respect to the Site or this Consent Decree.

d. In order to avoid any such obstruction, impediment or interference, the WMI Group and any of its agents performing the Site remedy and NRD Project, and the Owner Settling Defendants and any of their agents performing the WLP, shall coordinate their activities in and around the Site and Properties A, B and C. Such coordination shall include, at a minimum, one in-person meeting prior to the commencement of WLP Work and regular meetings (in person or by phone) as needed thereafter, until the earlier of (1) the date of completion of the Site remedy and NRD Project by the WMI Group and any of its agents and (2) the date of Satisfactory Completion of the WLP by Owner Settling Defendants or their agents. Settling Defendants shall notify the United States in writing of the time and location of each such meeting, and shall allow the United States to participate at the United States' discretion.

e. In the event a Settling Defendant believes that the Work required pursuant to this Consent Decree has obstructed, impeded or interfered (as those terms are used in this Paragraph 21) with the performance of the remedy at the Site pursuant to the UAOs, or with performance of the NRD Project required by the State Decree, such Settling Defendant shall so notify EPA in writing within 10 days after it discovers such alleged obstruction, impediment or interference.

f. Nothing in this Paragraph 21 creates a private cause of action or constitutes a basis for a claim against the United States. No dispute regarding a claim of obstruction, impediment or interference (as those terms are used in this Paragraph 21) may be raised in any dispute resolution proceeding pursuant to Section XII of this Consent Decree. Nothing in this Paragraph 21 limits Settling Defendants' right to argue that any delay in Work associated with an alleged obstruction, impediment or interference is subject to Section XI (Force Majeure).

22. Within twenty (20) days of their execution, Owner Settling Defendants shall provide to the United States and the WMI Group copies of any contracts, deeds, easements or other instrument entered into or executed by Owner Settling Defendants in connection with the WLP.

23. Within twenty (20) days after their receipt of EPA's written approval (if any) of an OSLMP, a WRP, an IFP or an FFP, or a modification thereof, Owner Settling Defendants or its agents shall provide a copy of such plan or modification to the WMI Group.

IX. CERTIFICATIONS AND REPORTS

24. SEP and WLP Certifications. With regard to the SEP and WLP, each Settling Defendant certifies the truth and accuracy of each of the following:

a. that all information it has provided to the United States in connection with the SEP and WLP is complete and accurate;

b. that, prior to the date of signature of this Decree, the Settling Defendant (including, for purposes of this Section IX, each of its affiliates, subsidiaries and parent corporations) was not required to perform or develop the SEP or the WLP, or any portion thereof,

by any federal, state, or local law or regulation, or by any agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that neither the SEP, the WLP, nor any portion thereof, is a project that it was or is planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Decree;

d. that it has not received, and is not negotiating to receive, credit for the SEP or the WLP in any other enforcement action; and

e. that it will not receive any reimbursement for any portion of the SEP or the WLP from any other person, except as otherwise provided in Paragraph 18.

25. Owner Settling Defendants certify that the appraisal of the market value of certain lots contained within Property A, dated December 5, 2003 ("Property Appraisal"), which they provided to the United States for use in determining the value of the SEP pursuant to EPA policy, was performed by state-licensed real estate appraisers with the Blau Appraisal Company, a real estate appraisal company with principal offices currently located in Springfield, Illinois, pursuant to express instructions by counsel for Owner Settling Defendants that such appraisal be performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Appraisal Institute of Chicago, Illinois, in cooperation with the U.S. Department of Justice.

26. Certifications of Pre-Execution Completion

a. The WMI Group hereby certifies that, no later than the date of execution by all Settling Defendants of the Consent Decree, it has:

- i. paid \$12,250 to CLF, pursuant to Paragraph 10(a); and
- ii. paid \$27,750 to CLF, pursuant to Paragraph 17(a).

b. Owner Settling Defendants hereby certify that, prior to the date of execution by all Settling Defendants of the Consent Decree, they have:

- i. paid \$12,750 to CLF, pursuant to Paragraph 10(b);
- ii. paid \$55,250 to CLF, pursuant to Paragraph 17(b);
- iii. granted such conservation easement(s), attached hereto as

Appendix E, in accordance with this Consent Decree;

iv. conveyed title to Property A to CLF, subject to the conservation easement(s), in accordance with this Consent Decree;

v. received no consideration for the granting of the conservation easement(s) or the conveyance of title to Property A; and

vi. entered into the contract with CLF attached hereto as Appendix F, in accordance with this Consent Decree.

27. Completion Reports

a. SEP Completion Report. Within thirty (30) days after the deadline for completion of the SEP, Owner Settling Defendants shall submit a SEP Completion Report to the United States, in accordance with Section XX (Notices and Submissions). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all Eligible SEP Costs spent in connection with the SEP;

iv. certification that all aspects of the SEP have been fully implemented pursuant to the provisions of this Consent Decree; and

v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits, if feasible).

b. WLP Completion Report. Within thirty (30) days after the deadline for completion of the WLP set forth in the WLP SOW, Owner Settling Defendants, by and through CLF or another EPA-approved Conservation Organization, shall submit a WLP Completion Report to the United States, in accordance with Section XX (Notices and Submissions). This WLP Completion Report shall contain the following information:

i. a detailed description of the WLP as implemented;

ii. a description of any problems encountered in completing the WLP and the solutions thereto;

iii. an itemized list of all Eligible WLP Costs spent in connection with the WLP;

iv. certification that all aspects of the WLP, except future maintenance, have been fully implemented pursuant to the provisions of this Consent Decree (including, without limitation, the WLP SOW, and the OSLMP, the WRP, the IFP and the FFP); and

v. a description of the environmental and public health benefits resulting from implementation of the WLP (with a quantification of the benefits, if feasible).

28. In itemizing Eligible SEP Costs in the SEP Completion Report pursuant to Paragraph 27(a), and in itemizing Eligible WLP Costs in the WLP Completion Report pursuant to Paragraph 27(b), Owner Settling Defendants, or its agents, shall clearly identify and provide

documentation for all Eligible WLP Costs and Eligible SEP Costs to EPA, including, at a minimum, invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made. If the WLP Completion Report includes costs not included in the definition of Eligible WLP Costs, and if the SEP Completion Report includes costs not included in the definition of Eligible SEP Costs, those costs must be clearly identified as such. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and services for which payment is being sought.

29. EPA may, in its sole, unreviewable discretion, require the submission of information related to the funding or performance of the SEP or WLP in addition to that described above, in order to determine the adequacy of SEP or WLP completion or the qualification of costs as Eligible SEP Costs or Eligible WLP Costs.

30. After receiving each Completion Report, the United States will notify Owner Settling Defendants whether or not Owner Settling Defendants have achieved Satisfactory Completion of the SEP or Satisfactory Completion of the WLP, including all of the payments they are required to make and all of the actions they are required to perform with respect to the SEP or WLP, in accordance with this Consent Decree (including, without limitation, the WLP SOW, and the OSLMP, the WRP, the IFP and the FFP). If Owner Settling Defendants' payments and actions do not constitute Satisfactory Completion of the SEP or Satisfactory Completion of the WLP, in accordance with all applicable plans and schedules, Owner Settling Defendants shall be deemed out of compliance with this Consent Decree and may be subject to Stipulated Penalties under Section X below. Owner Settling Defendants may submit their WLP Completion Report in two parts – one pertaining to Property C and the other pertaining to Property D – each

containing all information required by Paragraph 27(b) above for the subject Property, and EPA may issue its notice of Satisfactory Completion of the WLP in two parts – one pertaining to Property C and the other pertaining to Property D.

31. Disputes concerning the achievement of Satisfactory Completion of the SEP or WLP, and disputes concerning the amount of Eligible SEP Costs or Eligible WLP Costs, shall be resolved under Section XII (Dispute Resolution). No other disputes arising under this Consent Decree shall be subject to Dispute Resolution.

32. Each report and certification required under this Section IX shall be signed by an official of the submitting party with knowledge of the subject matter of the submission and shall bear the certification language below:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

33. Any public statement, oral or written, in print, film, or other media, made by Settling Defendants making reference to the SEP or WLP under this Decree, or to any portion thereof, shall include the following language: "This project was undertaken in connection with the settlement of Civil Action No. 02-2077 (D.N.J.), taken on behalf of the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675(c)."

34. Subject to the requirements of Paragraph 35 below, the members of the WMI Group that have the obligation, pursuant to the 1990 UAO, to restore and maintain wetlands on Block 400, Lots 49, 59 and 70, shall be relieved of their obligation on September 1, 2005. This Paragraph does not extend to, and shall have no effect upon the obligations of, any other Settling Defendant.

35. If EPA determines in its sole, unreviewable discretion that the Satisfactory Completion of the WLP, as it pertains to Block 400, Lots 49, 59 and 70, will not be achieved by Owner Settling Defendants, or by any Conservation Organization selected to perform the WLP pursuant to this Consent Decree, all Defendants shall be jointly and severally obligated under this Consent Decree to restore and maintain the wetlands on Block 400, Lots 49, 59 and 70 in accordance with the 1990 UAO Work Plan; provided, however, that unless otherwise agreed in writing by the United States and the WMI Group, any obligation of the WMI Group with respect to Block 400, Lots 49, 59 and 70, which may arise under this Paragraph, shall cease on September 1, 2010, unless the Army Corps of Engineers ("ACOE") implements a wetlands restoration project pursuant to the Owner Settling Defendants' pending application for a Recognizance Investigation, as more particularly described in the WLP SOW, and such project includes the maintenance of the wetlands in Block, 400, Lots 49, 59 and 70, and begins prior to September 1, 2010, in which events any obligation of the WMI Group with respect to such lots shall cease upon commencement of such project.

X. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

36. Interest on Late Payments. In addition to the interest required pursuant to Section V (Reimbursement of Response Costs) and Section VI (Civil Penalty), in the event that any payment required by Section VII (Supplemental Environmental Project), Section VIII (Additional Relief) or this Section X is not received when due, Superfund Interest shall accrue on the unpaid balance from the due date through the date of payment.

37. Stipulated Penalties

a. Settling Defendants shall be liable, jointly and severally, for Stipulated Penalties for violations of this Consent Decree in the amounts set forth in this Section X, unless excused under Section XI (Force Majeure); provided that (i) members of the WMI Group shall not be liable for violations by Owner Settling Defendants of requirements of this Consent Decree applicable solely to Owner Settling Defendants (or their agents), and (ii) Owner Settling Defendants shall not be liable for violations by members of the WMI Group of requirements of this Consent Decree applicable solely to the WMI Group (or their agents); and provided that (i) Owner Settling Defendants shall be liable, jointly and severally, for violations of requirements applicable solely to Owner Settling Defendants (or their agents), and (ii) members of the WMI Group shall be liable, jointly and severally, for violations of requirements applicable solely to the WMI Group (or their agents). A violation includes failing to comply with any obligation required by the terms of this Decree, including inter alia any work plan or schedule established by or approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree. "Compliance" shall mean completion of the requirements of this Consent Decree, in accordance with all terms

of this Consent Decree and within the time schedules established by and approved under this Consent Decree.

b. SEP Noncompliance. If Owner Settling Defendants grant conservation easement(s) covering less of Property A, or convey title to less of Property A, than is required under Section VII (Supplemental Environmental Project), then Owner Settling Defendants shall pay a stipulated penalty equal to either the difference between the value of the deed(s) actually granted and the deed(s) required to be granted, or the difference between the value of the title actually conveyed and the title required to be conveyed under the Decree, as applicable. For purposes of this Paragraph, the value of Property A, and any interest therein, shall be calculated based on the assumption that the value of the fee-simple interest in each acre of Property A is \$8,900.

c. WLP Abandonment. If Owner Settling Defendants halt or abandon work on the WLP required by Section VIII (Additional Relief), Owner Settling Defendants shall pay a stipulated penalty of \$100,000, in addition to any other penalties required under this Section X. The penalty in this Paragraph shall accrue as of the deadline for completion of the WLP, provided in the WLP SOW, or the date performance ceases, whichever is earlier. Owner Settling Defendants shall not be required to pay such stipulated penalty in the event that they are forced, through no fault of their own, to halt or abandon WLP work as a result of a force majeure event, as determined pursuant to Section XI (Force Majeure) below, or any other event outside of Owner Settling Defendants' control, as provided in Paragraph 38(g) below.

d. Compliance Milestones. If Owner Settling Defendants fail to comply with any schedule for implementing the WLP set forth in Section VIII (Additional Relief), including without limitation the schedule(s) established by or approved under the WLP SOW, and the

OSLMP, the WRP, the IFP and the FFP, Owner Settling Defendants shall pay Stipulated Penalties for each failure to meet a deadline or milestone of \$500 per day. Such penalties shall accrue from the date Owner Settling Defendants were required to meet each such deadline or milestone, until the date compliance with such deadline or milestone is achieved, except that such penalties shall not accrue after the date Owner Settling Defendants pay the full stipulated penalty for halting or abandoning work on the WLP, as provided in Paragraph 37(c) above.

e. Reporting Requirements. Stipulated Penalties shall accrue for each violation of the certification and reporting requirements of this Consent Decree, including without limitation Section IX (Certifications and Reports), the WLP SOW, the OSLMP, the WRP, the IFP and the FFP, in the amount of \$500 per violation per day, except that such penalties shall not accrue after the date Owner Settling Defendants pay the full stipulated penalty for halting or abandoning work on the WLP, as provided in Paragraph 37(c) above.

f. All Other Violations. For all other violations of this Consent Decree, each Settling Defendant shall pay Stipulated Penalties of \$500 for each violation of any requirement imposed upon it for each day such violation continues. Such Stipulated Penalties shall accrue from the date the violation first occurred until the day compliance is achieved.

38. General Provisions

a. Stipulated Penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Section shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

EPA-Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

All payments shall indicate that the payment is for Stipulated Penalties and shall reference the name and address of the Party making payment and the violation(s) for which the payment is being tendered, the EPA Region and Site Spill ID Number NJD049860836, Civil Action Number 02-2077 (D.N.J.), and DOJ Case Number 90-11-3-1563/1. Copies of any check paid pursuant to this Paragraph, the information specified above, and any accompanying transmittal letter, shall be sent to EPA and DOJ as provided in Section XX (Notices and Submissions) and to the Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, New York 10007-1866.

b. Stipulated Penalties shall accrue as provided in this Section X regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

c. If the United States institutes a proceeding to enforce this Consent Decree against one or more Settling Defendant(s), the Settling Defendant(s) whose act or omission caused the United States to seek enforcement of this Consent Decree shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

d. Payments made under this Section X shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of any Settling Defendant's failure to comply with the requirements of this Consent Decree.

e. Payment of Stipulated Penalties shall not excuse any Settling Defendant from complying with any other requirement of this Consent Decree.

f. The obligations of Owner Settling Defendants to achieve Satisfactory Completion of the SEP and Satisfactory Completion of the WLP, and each portion thereof, as defined in Paragraphs 11 and 18(a), respectively, are joint and several among the Owner Settling Defendants. In the event of the failure of any one or more Owner Settling Defendants to achieve Satisfactory Completion of the SEP or Satisfactory Completion of WLP, or any portion thereof, as provided in this Consent Decree, the remaining Owner Settling Defendants shall be jointly and severally responsible for such Satisfactory Completion.

g. Provided that Owner Settling Defendants otherwise remain in full compliance with all terms of the Consent Decree, Owner Settling Defendants shall not be liable for the payment of Stipulated Penalties accruing under Paragraph 37, during: (1) excusable days of noncompliance in which Owner Settling Defendants were late in meeting a deadline or milestone required pursuant to this Consent Decree solely as a result of a force majeure event, as provided by Section XI; (2) days of noncompliance due solely to a breach by CLF of the CLF Contract not caused by Owner Settling Defendants, which is not remedied despite Owner Settling Defendants' compliance with Paragraphs 24 through 27 of the WLP SOW, requiring Owner Settling Defendants to enforce the CLF Contract and, if possible, find a substitute for CLF; or (3) the failure of a third party (i.e., a person not a Party to this Consent Decree) to provide funding for WLP work, to provide access to property it owns or controls, or to act as a substitute for CLF, where such failure is not caused by Owner Settling Defendants and is not remedied despite Owner Settling Defendants' compliance with Paragraphs 24 through 27 of the WLP SOW and any other applicable provisions of this Consent Decree.

h. Stipulated Penalties shall continue to accrue as provided in this Section X, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 ("Penalty Interest"), but need not be paid until the following:

i. if the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing, together with Penalty Interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

ii. if the dispute is appealed to this Court and the United States prevails, in whole or in part, all accrued penalties determined by the Court to be owing, together with Penalty Interest, shall be paid within sixty (60) days of receiving the Court's decision or order, except as provided in Paragraph 38(h)(iii) below;

iii. if any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with Penalty Interest, within fifteen (15) days of receiving the final appellate court decision.

i. If any Settling Defendant liable hereunder, either jointly and severally with all Settling Defendants or jointly and severally with all members of a Settling Defendant group (i.e., with Owner Settling Defendants or with WMI Group members), for Stipulated Penalties fails to pay Stipulated Penalties when due, the United States may institute proceedings against such Settling Defendant, and any other Settling Defendant(s) that are jointly and severally liable therefor, to collect the penalties, as well as Penalty Interest thereon. Any Settling Defendant, or group of Settling Defendants, liable hereunder for Stipulated Penalties shall pay Penalty Interest

on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 38(b).

j. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of any one or more Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, subject to Section XIII (Covenant Not to Sue by Plaintiff); provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

k. Notwithstanding any other provision of this Section X, the United States may, in its unreviewable discretion, waive payment of any portion of the Stipulated Penalties that have accrued pursuant to this Consent Decree.

XI. FORCE MAJEURE

39. A "force majeure event" is any event beyond the control of a Settling Defendant, its contractors, or any entity controlled by a Settling Defendant that delays the performance of any obligation under this Consent Decree for which such Settling Defendant is liable, either jointly and severally among all Settling Defendants or jointly and severally within a Settling Defendant group, despite such Settling Defendant's best efforts to fulfill the obligation. For purposes of this Section XI only, "best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force

majeure” does not include the financial inability to perform any obligation under this Consent Decree.

40. Any Settling Defendant(s) wishing to invoke the “force majeure” provision of this Consent Decree shall provide notice orally and by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time such Settling Defendant(s) first knew of, or by the exercise of due diligence, should have known of, a force majeure event. Such Settling Defendant(s) shall also provide written notice, as provided in Section XX (Notices and Submissions), within seven (7) days of the time the Settling Defendant(s) first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Settling Defendant’s past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Settling Defendant’s rationale for attributing any delay to a force majeure event. Failure to provide the notices required by this Paragraph shall preclude the Settling Defendant from asserting any claim of force majeure.

41. If the United States agrees that a force majeure event has occurred, the United States may agree in writing to extend the time for performance of the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XXIII (Modification).

42. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by one or more Settling Defendant(s), the United States’ position shall be binding, unless the Settling Defendant(s) invoke(s) Dispute Resolution

under Section XII. In any such dispute, the Settling Defendant(s) bears the burden of proving, by a preponderance of the evidence: that each claimed force majeure event is a force majeure event; that the Settling Defendant(s) gave the notice required by Paragraph 40; that the force majeure event caused any delay the Settling Defendant(s) claim(s) was attributable to that event; and that the Settling Defendant(s) exercised best efforts to prevent or minimize any delay caused by the event.

XII. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section XII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section XII.

44. **Informal Dispute Resolution.** Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one or more Settling Defendant(s) send(s) the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within seven (7) days after the conclusion of the informal negotiation period, one or more Settling Defendant(s) invoke(s) formal dispute resolution procedures as set forth below.

45. **Formal Dispute Resolution.** In any dispute under this Section XII that is not resolved informally, the Settling Defendant(s) that invoked the informal dispute resolution

procedures shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph 44, by serving on the United States, in accordance with Section XX (Notices and Submissions), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation.

46. Within forty-five (45) days after receipt of one or more Settling Defendant(s) Statement of Position, EPA will serve on the Settling Defendant(s) its Statement of Position, including any supporting factual data, analysis, opinion, or documentation. Within ten (10) days after receipt of EPA's Statement of Position, the Settling Defendant(s) may submit a Reply.

47. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation.

48. The Chief of EPA's New Jersey Remediation Branch, Emergency and Remedial Response Division, EPA Region 2 ("Remediation Branch Chief"), will issue a final decision resolving the matter in dispute. The decision of the Remediation Branch Chief shall be binding upon the Settling Defendant(s) that invoked dispute resolution, and any other Settling Defendants that are jointly and severally liable for the Consent Decree obligation(s) addressed in the decision, subject only to the right to seek judicial review within ten (10) days after issuance of such decision, in accordance with the following Paragraph 49.

49. The Settling Defendant(s) that invoked dispute resolution, or that are jointly and severally liable for the obligation(s) addressed in a decision resolving the dispute, may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XX (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) days of receipt of the decision of the Remediation Branch Chief pursuant to the preceding Paragraph 48. The motion shall contain a

written statement of the position of the Settling Defendant(s) on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

50. The United States shall respond to the motion of the Settling Defendant(s) within the time period allowed by the Local Rules of this Court. The Settling Defendant(s) may file a reply memorandum, to the extent permitted by the Local Rules.

51. In any judicial proceeding reviewing a decision of the Remediation Branch Chief under this Section XII, the Settling Defendant(s) that sought such review shall have the burden of demonstrating that such decision was arbitrary or capricious or otherwise not in accordance with the law. Judicial review of such decision shall be on the administrative record compiled in accordance with the preceding Paragraph 50. In all other disputes, Settling Defendants shall bear the burden of demonstrating that their position complies with and furthers the objectives of this Consent Decree and CERCLA, and, where applicable, the State Decree and Spill Act, and that Settling Defendants are entitled to relief under applicable law.

52. The invocation of dispute resolution procedures under this Section XII shall not, by itself, extend, postpone, or affect in any way any obligation of a Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 38(h), above. If the Settling Defendant(s) do(es) not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section X.

XIII. COVENANT NOT TO SUE BY PLAINTIFF

53. Except as specifically provided in Section XIV (Reservation of Rights by United States), the United States covenants not to sue Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs, and pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for civil penalties for past noncompliance, occurring prior to December 12, 2003, with the 1990 UAO or 1992 UAO. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V (Reimbursement of Response Costs) and Section VI (Civil Penalty). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of all their obligations under this Consent Decree; provided, however, that if the WMI Group has satisfied all of the conditions required of it in order for the covenant not to sue in this Paragraph to become and remain effective, the WMI Group shall not be denied this covenant not to sue merely because Owner Settling Defendants have failed to comply with an obligation applicable exclusively to Owner Settling Defendants under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

XIV. RESERVATION OF RIGHTS BY UNITED STATES

54. The covenant not to sue set forth in Paragraph 53 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906, except liability under Section 106(b) of CERCLA, 42 U.S.C. § 6906(b), for civil penalties for violations of the 1990 UAO or the 1992 UAO for acts or omissions occurring prior to December 12, 2003; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

55. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if any certification made by Settling Defendants in Section IX, is false or, in any material respect, inaccurate.

XV. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

56. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Past Response Actions, the SEP or WLP Work, or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions in connection with the Site for which the Past Response Costs were incurred;

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs; and

d. any claim arising out of response or Work activities at the Site, including claims based on EPA's selection of SEP and WLP Work, oversight of such Work, or approval of plans for such activities.

57. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XVI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

58. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

59. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree are Past Response Costs.

60. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within fifteen (15) business days of service, in accordance with the applicable rules of civil procedure, of the complaint or any demand or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within fifteen (15) business days of service or receipt of any Motion for Summary Judgment, and within fifteen (15) business days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree, provided that service of the underlying complaint has been made in accordance with applicable rules of civil procedure.

61. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs or other relief related to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by Plaintiff set forth in Section XIII. Nothing in this Paragraph is intended to waive any rights Settling Defendants may have to assert or maintain a statute of limitations defense in potential future litigation.

XVII. SITE ACCESS/INSTITUTIONAL CONTROLS

62. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site, to Property A, and to any other property owned or controlled by Settling Defendants (except to the extent access by EPA to property in Block 399, Lots 6, 9, 28, 30, 31, 32, 44, 45, 50 and 51A, and Block 400, Lot 69, is prohibited by the express, lawful terms of a lease agreement executed prior to the date of execution of this Consent Decree) to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. monitoring of investigation, removal, remedial or other activities at the Site;
- b. verifying any data or information submitted to the United States;
- c. conducting investigations relating to contamination at or near the Site;
- d. obtaining samples;
- e. assessing the need for, planning, or implementing response actions at or near the Site;
- f. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XVIII (Access to Information); and
- g. assessing Settling Defendants' compliance with this Consent Decree.

63. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under

CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

64. Notice of Obligations to Successors-in-Title.

a. Within fifteen (15) days after entry of this Consent Decree, Owner Settling Defendants shall record a certified copy of this Consent Decree (including appendices) with the Recorder's Office or Registry of Deeds or other appropriate office of Middlesex County, State of New Jersey. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site or in Property A as specified herein shall contain a notice stating that the property is subject to this Consent Decree and any Superfund liens, and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each Owner Settling Defendant with respect to the provision of access under Section XVII (Site Access/Institutional Controls) shall be binding upon any and all persons who subsequently acquire any ownership or possessory interest in the Site property or portion thereof from such Owner Settling Defendant ("Successors-in-Title"). Within fifteen (15) days after entry of this Consent Decree, each Owner Settling Defendant shall record at the Recorder's Office or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for Middlesex County, State of New Jersey, a notice of obligation to provide access under Section XVII (Site Access/Institutional Controls) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any Owner Settling Defendant and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any interest in Properties A, B, C or D, shall give written notice of this Consent Decree to any grantee of a title or possessory interest and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligation to provide or secure access pursuant to this Section XVII (Site Access/Institutional Controls), shall continue to be met by Settling Defendants. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site or Property A or D as specified herein release or otherwise affect the liability of Settling Defendants to comply with this Consent Decree.

XVIII. ACCESS TO INFORMATION

65. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site, to Property A or D, or to any portion thereof.

66. Confidential Business Information and Privileged Documents

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by

EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

67. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site, including Properties A and D.

XIX. RETENTION OF RECORDS

68. Until 10 years after entry of this Consent Decree, or the conclusion of the Operation and Maintenance period required by the UAOs, whichever is later, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site, SEP or WLP implementation, or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

69. After the conclusion of the document retention period in the preceding Paragraph 68, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ within such 90-day period, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all

records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

70. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site.

XX. NOTICES AND SUBMISSIONS

71. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-1563/1)
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044-7611
ATTN: David L. Weigert, Esq.

As to EPA:

William C. Tucker, Esq.
Senior Assistant Regional Counsel
New Jersey Superfund Branch
U.S. Environmental Protection Agency
290 Broadway, 19th Floor
New York, NY 10007

John Prince
Chief, Central New Jersey Remediation Section
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency – Region II
290 Broadway, 19th Floor
New York, NY 10007

As to Settling Defendants:

As to Chemical Waste Management, Inc.; Earthline Company; SCA Services, Inc.; SCA Services of Passaic, Inc.; Wastequid, Inc.; Waste Management Holdings, Inc.; and Waste Management, Inc.:

Antoinette R. Stone, Esq.
BUCHANAN INGERSOLL, PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103-2985

As to Transtech Industries, Inc.; Filcrest Realty; and Kin-Buc, Inc.:

James M. Andrews, Esq.
BLANK ROME COMISKY & MCCAULEY LLP
Woodland Falls Corporate Park
210 Lake Drive East, Suite 200
Cherry Hill, NJ 08002-1164

As to Inmar Associates, Inc.:

Michael K. Mullen, Esq.
SCHENCK, PRICE, SMITH & KING, LLP
10 Washington Street, P.O. Box 905
Morristown, NJ 07963-0905

As to Anthony Gaess:

James O'Toole, Esq.
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186

XXI. RETENTION OF JURISDICTION

72. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XXII. INTEGRATION/APPENDICES

73. The Consent Decree (as defined in Paragraph 3(f)), including without limitation all appendices to this Consent Decree, as well as any work plans, schedules or other documents that are attached hereto or expressly incorporated by reference herein, constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in the Consent Decree. The following appendices are attached to and incorporated into the Consent Decree:

“Appendix A” is a description of Properties A, B, C and D.

“Appendix B” is a map generally depicting the Site and Properties A, B, C and D.

“Appendix C” is the deeds transferring title to Property A.

“Appendix D” is the WLP SOW.

"Appendix E" is two Conservation Easements.

"Appendix F" is the contract between CLF and Owner Settling Defendants.

XXIII. MODIFICATION

74. Schedules established by or approved under this Consent Decree for completion of the WLP may be modified by agreement of EPA and the Owner Settling Defendants. All such modifications shall be made in writing.

75. No material modifications shall be made to the WLP SOW without the written approval of the United States, the Owner Settling Defendants, and the Court. No material modifications shall be made to the CLF Contract without the written approval of the United States and Owners Settling Defendants. Owner Settling Defendants shall notify the WMI Group of any such approved material modification of the WLP SOW or the CLF Contract. Modifications to the WLP SOW and CLF Contract that do not materially alter that document may be made by written agreement between EPA and the Owner Settling Defendants, without notice to other Parties. Notwithstanding the foregoing, if Owner Settling Defendants propose any modification to the WLP SOW or the CLF Contract that includes any new requirement to perform wetland restoration or other work on any lot subject to ongoing or future remedial action required pursuant to the UAOs or 1990 UAO Work Plan, or any modification thereof, or on any lot subject to ongoing or future work required pursuant to the NRD Project, or any modification thereof, including without limitation Block 400, Lots 2-A, 3-B, 3-C, 8, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 56, 57, 58, 59, 60, 61 or 70, or if any such proposed modification changes or affects in any way the payment requirements of Paragraph 18, then Owner Settling Defendants shall provide the WMI Group with notice of such proposed modification and an opportunity to comment thereon within fifteen (15) business days after

receipt of such notice; provided, however, that the United States and Owner Settling Defendants are not required to accept or adopt any such comment. Owner Settling Defendants shall provide the WMI Group with notice of any proposed modifications to the CLF Contract and an opportunity to comment thereon within fifteen (15) business days after receipt of such notice; provided, however, that the United States and Owner Settling Defendants are not required to accept or adopt any such comment.

76. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

77. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

78. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole, unreviewable discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. EFFECTIVE DATE

79. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXVI. SIGNATORIES/SERVICE

80. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

81. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

82. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXVII. FINAL JUDGMENT

83. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2004.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chemical Waste Management, et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR THE UNITED STATES OF AMERICA

Date: 3.8.05

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 3/8/05

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Environmental Enforcement Section
Environment and Natural Resources
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CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

SUSAN J. STEELE (SJS 7042)
Assistant U.S. Attorney
Chief, Civil Division
U.S. Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07101

Date: 1-11-05

WILLIAM MCCABE
Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection
Agency, Region II
290 Broadway
New York, NY 10007-1866

Date: 6-11-05

WILLIAM C. TUCKER
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region II
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chemical Waste Management, et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR DEFENDANTS CHEMICAL WASTE MANAGEMENT, INC., for itself and as successor to EARTHLINE COMPANY; SCA SERVICES OF PASSAIC, INC.; and WASTEQUID, INC.; SC HOLDINGS, INC. successor to SCA SERVICES, INC., and WASTE MANAGEMENT HOLDINGS, INC.;

Date: 12/30/04

Antoinette R. Stone, Esq.
BUCHANAN INGERSOLL PC
1835 Market St., 14th Fl.
Philadelphia PA 19103

Agent Authorized to Accept Service of Papers Filed in this Action on Behalf of Above-Signed Party:

Steven M. Morgan, Esq.
Vice President and
Assistant General Counsel-Regulatory/HSE
WASTE MANAGEMENT, INC.
1001 Fannin, Suite 4000
Houston, TX 77002

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chemical Waste Management, Inc., et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc relating to the Kin Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR DEFENDANT
WASTE MANAGEMENT, INC.

Linda J. Smith
Secretary
Waste Management, Inc.

Date: 12/29/04

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Date: _____

Steven M. Morgan, Esquire
Vice President & Assistant
General Counsel-Regulatory/HSE
Waste Management, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chemical Waste Management, et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc FLandfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR DEFENDANTS TRANSTECH
INDUSTRIES, INC.; FILCREST REALTY; AND
KIN-BUC, INC.:

Date: 12/30/04

James M. Andrews, Esq.
BLANK ROME COMISKY & MCCAULEY LLP
Woodland Falls Corporate Park
210 Lake Drive East, Suite 200
Cherry Hill, NJ 08002-1164

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Andrew Mayer
Chief Financial Officer
TRANSTECH INDUSTRIES, INC.
200 Centennial Avenue, Suite 202
Piscataway, NJ 08854

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Chemical Waste Management, et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR DEFENDANT INMAR ASSOCIATES:

Date:

12/30/64

Michael K. Mullen, Esq.
SCHENCK, PRICE, SMITH & KING LLP
10 Washington Street
P.O. Box 905
Morristown, NJ 07963-0905

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Michael K. Mullen, Esq.
SCHENCK, PRICE, SMITH & KING LLP
10 Washington Street
P.O. Box 905
Morristown, NJ 07963-0905

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chemical Waste Management, et al., Civil Action NO. 02-2077 (D.N.J.), relating to the Kin-Buc Landfill Superfund Site, in Edison Township, Middlesex County, New Jersey.

FOR DEFENDANT ANTHONY GAESS:

Date: 12-30-04

James O'Toole, Esq.
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

James O'Toole, Esq.
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1500 Market Street, 38th Floor
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